Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Application by SBC Communications Inc., Nevada Bell Telephone Company, and Southwestern Bell Communications Services, Inc. for Provision of In-Region, InterLATA Services in Nevada	WC Docket No. 03-10

"TRACK A" REPLY COMMENTS OF SBC COMMUNICATIONS INC.

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California Order	Memorandum Opinion and Order, *Application by SBC Communications Inc., et al., for Authorization To Provide In-Region, InterLATA Services in California*, WC Docket No. 02-306, FCC 02-330 (rel. Dec. 19, 2002)
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SBC Communications Inc. ("SBC") hereby replies to the comments of WorldCom, Inc. ("WorldCom") regarding SBC's showing of compliance with "Track A" of section 271, 47 U.S.C. § 271(c)(1)(A). SBC is filing this portion of its reply well in advance of the February 26, 2003 deadline for filing reply comments in this proceeding. Its reason for doing so is simple. As we explain in Part II below, although SBC firmly believes that the evidence included with these reply comments is properly offered as rebuttal to WorldCom's comments regarding Track A, some parties may disagree. SBC is accordingly filing Track A rebuttal evidence early to give all parties ample opportunity to evaluate it and, if necessary, comment upon it. SBC will address the few additional issues identified by commenters in this proceeding in supplemental reply comments filed in accordance with the schedule established by the Commission's public notice in this docket.[1]

[1] *See* Public Notice, *Comments Requested on the Application by SBC Communications Inc. for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of Nevada,* DA 03-92, WC Docket No. 03-10 (rel. Jan. 14, 2003).

INTRODUCTION AND EXECUTIVE SUMMARY

I. Track A requires an applicant for section 271 relief to establish, among other things, the existence of an "actual commercial alternative" in the residential market. SBC's Application satisfies this requirement in three distinct ways: by identifying two facilities-based carriers, each of which serves more than a *de minimis* number of residential customers in Nevada Bell's serving area; by documenting the successful efforts of a broadband PCS provider to market its service as a replacement for Nevada Bell's residential service; and by pointing to resellers that collectively provide service to approximately 1,300 residential customers in Nevada Bell's serving area.

WorldCom is the only commenter to dispute this showing. Its comments, however, fall far short of undermining SBC's showing in any of these categories, much less all three. Indeed, as to the facilities-based carriers on which SBC relies, WorldCom does not – because it cannot – present any evidence to dispute that these carriers are actually providing the service stated in the Application. Additional evidence provided with these reply comments makes clear, moreover, that one of these carriers is providing facilities-based service to numerous customers that previously took residential service from Nevada Bell, at the same addresses to which Nevada Bell provided that residential service, and in many cases using the same telephone number previously served by Nevada Bell. This evidence is enough, standing alone, to demonstrate the existence of an actual commercial alternative to Nevada Bell in the residential market. The Commission accordingly need go no further to resolve the question of SBC's compliance with Track A.

SBC's reliance on competition from broadband PCS provider Cricket Communications, Inc. ("Cricket") is likewise bolstered by additional evidence provided with these comments. In the Application, SBC relied upon the results of a study that Cricket itself commissioned which reveals that approximately one in four Cricket customers uses his or her broadband PCS service as a replacement for a traditional wireline phone. WorldCom's comments complain that SBC was unable to provide "any backup information about" the Cricket poll. In response, SBC now offers the results of a separate poll – commissioned by Nevada Bell and conducted this month – which demonstrates that, if anything, SBC's original estimates regarding the extent of wireline replacement by Cricket in Nevada Bell's serving area were overly conservative. This poll thus provides additional evidence to support SBC's showing that Cricket qualifies as a "competing provider" of telephone exchange service to residential subscribers for purposes of Track A.

II. The evidence SBC relies upon in these reply comments is presented in full compliance with the Commission's procedural rules. Those rules expressly permit the introduction of "new evidence" to rebut claims raised by commenters. The evidence SBC presents with these reply comments is offered in direct rebuttal to WorldCom's comments and therefore falls comfortably into that category. Indeed, from a procedural perspective, this evidence is no different from other "new" evidence the Commission has routinely reviewed in the section 271 context without any suggestion whatsoever that it violates the Commission's procedural rules.

In the unlikely event the Commission concludes otherwise, SBC respectfully requests that the Commission waive its procedural rules to permit consideration of the evidence included with these reply comments. For the reasons set out below, such a waiver would be in the public

interest and consistent with Commission precedent. Indeed, unlike in many cases in which the Commission has waived its "complete-when-filed" rule, the evidence SBC seeks to have considered here does not involve a substantive change in SBC's showing of checklist compliance. Waiver of the Commission's procedural rules here, therefore, would not even arguably encourage section 271 applicants to "game" the process in the future by "testing the waters" with a purportedly insufficient showing of checklist compliance. Moreover, SBC is filing this information well in advance to the deadline for filing reply comments in this proceeding. Accordingly, no party can claim prejudice from the filing of this information, since all parties will have ample opportunity to review it and comment on it as necessary.

DISCUSSION

I. SBC IS ELIGIBLE FOR SECTION 271 RELIEF UNDER TRACK A.

Track A requires a Bell company applicant to demonstrate the existence of an "actual commercial alternative" for both business and residential customers. No party disputes SBC's showing with respect to business customers. Nor could they. SBC's Application demonstrated that, as of November 2002, CLECs had captured between 22 and 25 percent of the business lines in Nevada Bell's serving area, the vast majority of which were being served either partially or exclusively over CLECs' own facilities. *See* J.G. Smith Aff. ¶ 10 & Tables 2, 3 (App. A, Tab 19).

The question, then, is whether residential customers in Nevada Bell's serving area likewise have an "actual commercial alternative" to Nevada Bell's service. They plainly do. As set forth in the Application, at least two carriers – ******* ******* and ******* ******* are providing predominantly facilities-based service to more than a *de minimis* number of residential

customers in Nevada Bell's serving area. *See id.* ¶ 12 & Attach. D. A third carrier – Cricket – is successfully offering broadband PCS as a replacement for wireline service. *See id.* ¶¶ 14-21. And, finally, numerous additional carriers are serving residential customers through resale. *See id.* ¶ 13 & Attach. D. Each of these categories of competitors satisfies the residential prong of Track A standing alone. Together, they make undeniably clear that SBC's competitors provide sufficient service to the residential market to satisfy Track A.

Only one party (WorldCom) disputes SBC's Track A showing with respect to residential customers. As we explain below, however, WorldCom fails to provide any evidence that calls into question SBC's showing with respect to any of these three categories, much less all of them.

UNE-P and Facilities-Based Wireline Competition. SBC's Application identified two wireline carriers providing service "over their own telephone exchange service facilities" as that term has been defined in prior Commission orders. *See Michigan Order* ¶ 94 (service over UNEs qualifies as service over "a competing provider's 'own telephone exchange service facilities'") (*quoting* 47 U.S.C. § 271(c)(1)(A)). The first of these, ***** *****, was, at the time of the Application, serving 28 residential lines over UNE-P, and it is now serving 24. *See* J.G. Smith Reply Aff. ¶ 4 & n.4. The second, ***** *****, is providing facilities-based service to numerous customers who are listed as residential customers in the white pages. *See id.* ¶ 8. As explained in the Application – and as WorldCom does not dispute – the number of customers served by each of these carriers qualifies as "more than *de minimis*" as that standard has been developed and applied in prior Commission decisions. *See, e.g., Vermont Order* ¶ 11 (concluding that "Z-Tel . . . serves more than a *de minimis* number of end users" and "represents

an 'actual commercial alternative' to Verizon in Vermont").[2] And, critically, although the Commission has expressly "encourage[d] competing LECs . . . to provide to the Commission information about their operations in the relevant state, including the number of access lines served," *Michigan Order* ¶ 66 n.143, neither ******* ******* nor ******* ******* has "uttered . . . a peep in protest, correction or qualification" of the line counts SBC attributed to them in the Application. *Sprint Communications Co. v. FCC*, 274 F.3d 549, 562 (D.C. Cir. 2001).

Although WorldCom does not – because it cannot, based upon any evidence of its own – dispute the fact that both of these carriers are *providing* service in Nevada, it does dispute SBC's showing by claiming that representatives of both companies purportedly told WorldCom that they do not offer residential service in Nevada. *See* WorldCom Comments at 2-3. As an initial matter, however, WorldCom does not bother to "certif[y] the accuracy of [its] factual assertions" in this regard. *Michigan Order* ¶ 47. The Commission should therefore assign those assertions no "probative value." *Id.*; *see also Texas Order* ¶ 50 ("[m]ere unsupported evidence in

[2] The Commission has never specifically defined the term "*de minimis*" in the section 271 context. Moreover, as we discuss in more detail below, *see infra* pp. 12-13, the Commission has decisively rejected the notion that competitors must serve a particular share of the local market before a BOC is permitted to provide interLATA services. As a result, section 271 applicants are left without any firm guidance regarding precisely how many customers is enough to demonstrate that a particular carrier is an "actual commercial alternative." In fact, the only guidance available is the Commission's prior orders on this issue, coupled with a careful examination of the information on which the Commission relied in those orders. Even then, however, because much of that information was filed under seal, only the Commission is able to determine precisely how many customers the Commission determined to be "more than *de minimis*" in a particular state, and to extrapolate that information to a serving area such as Nevada Bell's that includes relatively few access lines spread out over a massive area. In any case, for the reasons set out in the text, the showing SBC has provided with respect to Track A in Nevada demonstrates that CLECs have the capability to serve residential customers on a facilities-basis and that at least two CLECs are in fact providing such service. With respect to residential competition, Track A requires nothing more.

opposition will not suffice" to rebut a BOC's prima facie showing of compliance with section 271); Public Notice, *Updated Filing Requirements for Bell Operating Company Applications Under Section 271 of the Communications Act*, DA 01-734, at 8 (rel. Mar. 23, 2001) ("*Filing Requirements Notice*") ("Anecdotal evidence or unsupported assertions in opposition to an application are not persuasive.").

In any case, the question whether these carriers "offer" service today in Nevada is beside the point. As this Commission has recognized, "it would be unfair and inconsistent with the statute to foreclose a BOC's application under section 271 based on the marketing decision of a relatively established competitive provider." *Missouri/Arkansas Order* ¶ 119. Both ******* ******* and ******* ******* are established CLECs.[3] To refuse to consider these carriers as "competing providers" for purposes of Track A – for no other reason than WorldCom's unsupported claim that they are (for now) not "offering" residential service in Nevada – would accordingly "produce absurd results" and "cannot be what Congress intended for Track A." *Id.*

[3] *******

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Moreover, with respect to at least one of these carriers (*** ***), WorldCom's unsupported assertion appears to be wrong. As the reply affidavit of J. Gary Smith explains, this carrier currently provides service to at least two dozen customers who previously received residential service from Nevada Bell at the same residential locations, and whose telephone numbers are listed in the residential section of the white pages. *See* J.G. Smith Reply Aff. ¶ 8 & Attach. E. In fact, many of these customers "ported" their telephone numbers from Nevada Bell – *i.e.*, they took their residential phone numbers with them when they signed on with *** ***. *See id.* Attach. E. It is thus plainly the case that *** *** is offering residential service on a facilities-basis in Nevada Bell's serving area.[4]

In short, the unrebutted evidence in the record establishes that both *** *** and *** *** serve more than a *de minimis* number of residential customers in Nevada Bell's serving area and accordingly qualify as "competing providers" for purposes of Track A. Coupled with the substantial evidence SBC has provided regarding facilities-competition to the business market in Nevada Bell's serving area, these carriers satisfy Track A under the Commission's well-established precedent.

Broadband PCS Competition. SBC's Track A showing also relies on competition from Cricket, a broadband PCS provider that markets its service as a replacement for traditional wireline service. As set out in the affidavit of J. Gary Smith, Cricket's marketing efforts and price plans demonstrate that it is positioning itself as a replacement for Nevada Bell service, and

[4] WorldCom also complains that SBC keeps confidential the names of the residential wireline competitors in Nevada Bell's serving area. *See* WorldCom Comments at 2. The reason it has done so, of course, is to protect these competitors' proprietary information. *See* J.G. Smith Reply Aff. ¶ 3 n.3. In any case, the residential customers taking service from these carriers obviously had no difficulty learning their identity.

the results of a survey that Cricket itself commissioned demonstrate that it is doing so successfully. *See* J.G. Smith Aff. ¶¶ 15-21.

WorldCom disputes SBC's showing in this regard on the theory that Cricket's service suffers from "technical limitations" that render it an unlikely substitute for residential wireline service. WorldCom Comments at 6-7. But the two "technical limitations" WorldCom identifies – a single handset and slow data-transmission speeds – apply to broadband PCS generally. And the Commission has already held that, any purported "technical limitations" notwithstanding, a broadband PCS provider qualifies as a Track A carrier, provided its services are "being used to replace wireline service." *Second Louisiana Order* ¶ 31. Moreover, WorldCom fails to take into account the relative advantages Cricket offers over wireline service – such as mobility, price, and service bundles – that, depending on the customer's preferences, may off-set any perceived disadvantages. And that, of course, is the whole point of competition. Although a UNE-P carrier such as WorldCom that is essentially providing precisely the same service as the ILEC may be excused for failing to grasp the point, the key here is that Cricket offers a *differentiated* product – with different strengths and different weaknesses – that many customers find preferable to, and a substitute for, Nevada Bell's residential service.

WorldCom also complains that SBC was unable to provide "any backup information about" the Cricket poll on which it relied to estimate the number of Cricket customers that have replaced residential wireline service with broadband PCS. WorldCom Comments at 5. But, even assuming that the absence of that "backup information" renders the Cricket poll unreliable – and there is no basis to that assumption – its absence has no bearing on the additional evidence SBC has produced to support its showing that Cricket qualifies as a "competing provider" for

purposes of Track A. All of this additional evidence – including Cricket's advertising, its pricing plans, and the statements of Cricket itself – is responsive to the Commission's discussion of broadband PCS in the *Second Louisiana Order*, and all of it stands unrebutted on this record. *See* J.G. Smith Aff. ¶¶ 15-17; J.G. Smith Reply Aff. ¶¶ 13-14.

In addition, in the affidavit of Mr. Keith Frederick filed with these comments, SBC presents the results of an additional survey designed to determine precisely the degree to which Cricket operates as a wireline replacement in Nevada Bell's serving area. Mr. Frederick's affidavit provides all of the "backup information" the Commission or any party could want, and it plainly demonstrates that, if anything, the estimates SBC provided in the Application regarding the extent to which Cricket serves as a wireline replacement were extremely conservative. Whereas the Application estimated that Cricket served approximately 9,000 customers in Nevada Bell's serving area, *see* J.G. Smith Aff. ¶ 20 & n.31, Cricket in fact serves approximately 15,200, *see* Frederick Aff. ¶ 20.[5] Whereas the Application estimated that approximately 2,000 of these customers had replaced wireline service with Cricket service, *see* J.G. Smith Aff. ¶ 20, Mr. Frederick estimates that, in fact, approximately 2,842 Cricket customers are using their broadband PCS service as a replacement for wireline service, *see* Frederick Aff. ¶ 22. This latter estimate, moreover, is based on an extremely conservative methodology that counts only customers who, in response to direct questions, unambiguously indicated both that they do not have "wireline local telephone service in [their] home," *and* that they "previously" had such

[5] This figure is borne out by a recent filing Cricket itself made with the Public Utilities Commission of Nevada ("PUCN"), which indicates that, in the fourth quarter of 2002, Cricket served an average of approximately 15,300 lines. *See* J.G. Smith Reply Aff. ¶ 15 n.23 & Attachs. C, D.

service in their home "that was disconnected or terminated because [they] decided to have a Cricket phone." *Id.* ¶ 11 & Attach. B. In light of the results of this survey, there can be no serious dispute that, as SBC made clear in the Application and as Cricket itself has proclaimed, Cricket is an "actual commercial alternative" to residential customers in Nevada Bell's serving area.[6]

Resale Competition. Finally, SBC's residential Track A showing relies on the numerous resellers that provide service to the residential market in Nevada Bell's serving area. *See* J.G. Smith Aff. ¶ 13 & Attach. D. As SBC explained in the Application, *see* SBC Brief at 9-10, Track A by its terms contemplates reliance on a group of carriers – *i.e.*, "competing providers" – that, when viewed collectively, provide "telephone exchange service" to both "residential and business subscribers" predominantly over their own facilities "in combination with . . . resale." 47 U.S.C. § 271(c)(1)(A). The resellers in Nevada Bell's service area, when considered in connection with the providers of facilities-based service to the business market, thus fall within the group of "competing providers" on which SBC is entitled to rely in this Application.

WorldCom disputes this analysis on the theory that "pure residential resellers" cannot qualify as "competing providers" for purposes of Track A. *See* WorldCom Comments at 3. Its statutory analysis, however, simply misses the point. There is no dispute that, as WorldCom emphasizes, a Bell company applicant must identify service offered "predominantly over the facilities of the competing . . . providers." *Id.*; *see* 47 U.S.C. § 271(c)(1)(A). The critical point,

[6] WorldCom's final criticism of Cricket – that its "future is somewhat uncertain" because the stock of its parent was recently de-listed, *see* WorldCom Comments at 6 – is both amusing in light of WorldCom's own financial predicament, and beside the point. Cricket was in the market providing service at the time of the Application, and it remains there today. It is therefore a "competing provider" for purposes of Track A.

however, is that the statute expressly permits an applicant to rely on such facilities-based service "*in combination* with the resale of the telecommunications services of another carrier." 47 U.S.C. § 271(c)(1)(A) (emphasis added). That is exactly what SBC has done here. It has pointed to a group of carriers – including, among others, WorldCom and ATG – that provide facilities-based service to the business market and who, "in combination with" numerous carriers offering "resale" of Nevada Bell's service, provide "telephone exchange service . . . to residential and business subscribers." *Id.*; *see* J.G. Smith Aff. Attach. D. That showing thus plainly falls within the letter of the statute.

WorldCom also contends that the pure resellers on which SBC relies serve too few lines to qualify as "competing providers" for purposes of Track A. *See* WorldCom Comments at 4. At bottom, this claim boils down to the timeworn argument that section 271 should be interpreted to include a market-share test. As the Commission has held time and again, there is no requirement under Track A "that a new entrant serve a specific market share . . . to be considered a 'competing provider.'" *Michigan Order* ¶ 77; *see also, e.g., Kansas/Oklahoma Order* ¶ 268. Furthermore, "[g]iven an affirmative showing that the competitive checklist has been satisfied, low customer volumes or the failure of any number of companies to enter the market in and of themselves do not undermine that showing." *Pennsylvania Order* ¶ 126. In view of the Commission's abundant precedent on this question, the approximately 1,300 residential lines that resellers serve in Nevada Bell's serving area is thus clearly sufficient to establish that residential consumers have an "actual commercial alternative" to Nevada Bell's service.

WorldCom also has no answer to the point that the Commission has *already* recognized that resale alone can satisfy the Track A requirement of competitive service to the residential market, provided that the resale is offered by a carrier that also provides facilities-based service to business customers. *See Kansas/Oklahoma Order* ¶ 43 n.101; *Second Louisiana Order* ¶ 48. As noted above, WorldCom itself is one such provider of facilities-based service to the business market in Nevada Bell's serving area. And WorldCom can point to no basis in law or logic on which the Commission could conclude that resold service that "counts" for purposes of Track A when offered by WorldCom itself somehow no longer "counts" when offered by a pure reseller. Indeed, the Commission has already recognized that it would "produce absurd results" to condition to condition Bell company entry into the interLATA market "on the marketing decision" of competitive carriers. *Missouri/Arkansas Order* ¶ 119. WorldCom itself notes its "future intention" to enter the local market in Nevada. *See* WorldCom Comments at 7. Yet, on its reading, Nevada Bell's entry into the interLATA market should be held hostage to its decision to act on that "intention." That "cannot be what Congress intended for Track A." *Missouri/Arkansas Order* ¶ 119.

In sum, whether considered alone or collectively, each category of SBC's showing with respect to "competing providers" in the residential market in Nevada Bell's serving area falls comfortably within the statute and this Commission's precedent. When considered in conjunction with SBC's undisputed showing with respect to the business market, this showing is plainly sufficient to satisfy Track A.

II. SBC'S TRACK A SHOWING IS CONSISTENT WITH THE COMMISSION'S PROCEDURAL RULES.

The entirety of SBC's Track A showing – including the affidavit of Keith Frederick discussed above – falls squarely within the Commission's procedural rules. Those rules expressly permit an applicant for section 271 relief to "submit new evidence after filing . . . to rebut arguments made . . . by other commenters." *See Filing Requirements Notice* at 3. The only qualification to this rule is that the evidence "should not relate to performance after the filing of comments by third parties." *Id.* As is clear from the discussion above, the evidence included with these comments – including the affidavit of Mr. Frederick – is directly responsive to WorldCom's comments in opposition to the Application. And that evidence does not relate to "performance" at all, much less to "performance after the filing of comments." SBC's Track A reply showing is therefore properly considered here.

Indeed, the Commission has already concluded as much in virtually identical circumstances. In the *Kansas/Oklahoma* proceeding, in response to commenters' claims that SBC failed to satisfy Track A in Kansas, SBC conducted an "investigation" into "the number of UNE-P access lines used to provide service to residential customers in Kansas." *Kansas/Oklahoma Order* ¶ 42 n.97. SBC presented the results of that investigation in an *ex parte* letter submitted after reply comments, and the Commission relied upon it without any suggestion that it violated the Commission's procedural rules. *See id.* The survey conducted by Mr. Frederick and detailed above is, from the perspective of the "complete-when-filed" rule, indistinguishable from the "investigation" presented in the *Kansas/Oklahoma* proceeding, and it is therefore equally worthy of the Commission's consideration.[7]

[7] The additional evidence presented here is likewise similar to the special data studies that section 271 applicants routinely submit – and upon which the Commission routinely relies – in

In the unlikely event the Commission finds to the contrary, Nevada Bell respectfully requests that the Commission waive its procedural rules to permit consideration of the evidence included with these comments. Such a waiver is justified by the special circumstances at issue here, it would further the public interest, and it is consistent with Commission precedent.

First, SBC has responded expeditiously "to criticism in the record" by providing extensive probative evidence regarding the state of competition in Nevada, and it has done so in a manner that ensures that all "interested parties have . . . an opportunity to evaluate" that evidence and comment on it to the extent necessary. *California Order* ¶¶ 29-30. Indeed, SBC has taken great pains to provide this information well in advance of the deadline for filing reply comments precisely to ensure that parties, if they wish, can address it on reply. As a result of that unprecedented effort, the evidence the Commission is being asked to consider here is being filed on day 31 of the Commission's 90-day review process. By way of contrast, the Commission has previously granted waivers of its procedural rules to permit review of information filed on day 63, day 64, and day 80, respectively, of its 90-day process. [8]

Second, the additional information the Commission is being asked to consider here does not involve a substantive change in SBC's showing of checklist compliance. Accordingly, it

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response to comments regarding checklist compliance. *See*, *e.g.*, *Missouri/Arkansas Order* ¶ 30 (noting that, "[i]n response to the specific concerns of the Department of Justice, SWBT provided updated LMOS data that it claims will properly state errors as a percentage of new orders"); *Georgia/Louisiana Order* ¶ 158 & n.569.

[8] *See Virginia Order* ¶¶ 78-85; *New Hampshire/Delaware Order* ¶¶ 11-16; *Rhode Island Order* ¶¶ 7-17; *see also* Public Notice, *Comments Requested in Connection With Verizon's Section 271 Application for Virginia*, DA 02-2525, WC Docket No. 02-214 (rel. Oct. 4, 2002); Public Notice, *Comments Requested in Connection With Verizon's Section 271 Joint Application For New Hampshire and Delaware*, DA 02-2153, WC Docket No. 02-157 (rel. Sept. 4, 2002); Public Notice, *Comments Requested in Connection With Verizon's Section 271 Application for Rhode Island*, DA 02-356, CC Docket No. 01-324 (rel. Feb. 14, 2002).

cannot even be argued that SBC has attempted to "test the waters" to see if the steps it had taken to open its local markets at the time of the Application would "pass muster with the majority," only to take additional steps later when confronted with opposition. *See California Order*, Dissenting Statement of Commissioner Martin, at 4; *see also Kansas/Oklahoma Order* ¶ 27 (reflecting concern that "applicants might attempt to . . . 'game' the section 271 process with repeated last minute rate reductions"). On the contrary, SBC's showing regarding checklist compliance is the same today as it was on day one of the Application. The only additional evidence being offered here – in rebuttal to WorldCom's comments – relates to what *other* carriers are doing to capitalize on the efforts Nevada Bell has taken to open its local markets. To the extent this information is necessary at all, moreover, it is only because those other carriers have themselves failed to answer the Commission's call for "information about their operations in [Nevada], including the number of access lines served." *Michigan Order* ¶ 66 n.143.

Finally, SBC's Application is "otherwise persuasive and demonstrates a commitment to opening local markets to competition as required by the 1996 Act." *California Order* ¶ 30. The Commission has previously suggested that, "if all other requirements of section 271 have been satisfied," it would be "[in]consistent with congressional intent to exclude a BOC from the in-region, interLATA market" on the basis of a failure to comply with Track A. *Second Louisiana Order* ¶ 48. Chairman Powell has likewise explained that

> [I]t would be, at best, anomalous and potentially inconsistent with the intent of Congress if a Bell Company faced with non-trivial facilities-based competition were to satisfy the checklist, public interest standard and virtually all of the other local market-opening requirements of sections 271 and 272 and still have its application rejected because the

> Commission could not reasonably interpret the statute in a way that would allow the Bell Company to also satisfy [Track A].[9]

This Application has generated the least opposition – by far – of any section 271 application filed to date. That limited opposition is a testament to the comprehensive steps Nevada Bell has taken to open local markets and its full compliance with the competitive checklist. As the PUCN has expressly concluded – and as SBC documented in detail in the Application – prompt approval of this Application will further the public interest by bringing to the consumers in Nevada Bell's serving area the same benefits of unfettered competition that are already available to consumers elsewhere in the state. To the extent the Commission determines it must waive its procedural rules in this narrow instance in order to grant that approval, such waiver is likewise in the public interest.

[9] Letter from the Hon. Michael K. Powell, FCC, to Senator Samuel D. Brownback, Attach. at 1 (April 22, 1998).

CONCLUSION

SBC satisfies Track A in Nevada.

Respectfully submitted,

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